

**DMR ADVISORY COUNCIL MEETING**  
**April 20, 2005, 1:00 p.m.**  
**Minutes**

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on this date at the Department of Human Services Central Offices Conference Room, 442 Civic Center Drive, Augusta. AC members attending this meeting included **Dana Rice, Sr. - Chair, Al West – Vice Chair, David Turner, David Pecci, Dana Temple, Craig Pendleton, Bill Sutter, Scott Tilton and Ralph Smith.** Council members **Rod Mitchell, Blair Pyne, Mike Danforth, Larry Knapp and Allyson Jordan** were unable to attend. Department staff included Commissioner George Lapointe, Sgt. Steve Ingram, Amy Fitzpatrick, Samantha Horn Olsen, Mary Costigan, Deputy Commissioner Lewis Flagg and L. Churchill. Other attendees included John Butler, H. Charles Gray and Howard J. Gray (Lobster Zone G).

**1. Welcome**

Chair Dana Rice called the meeting to order.

**2. Approval of minutes**

Typographic and spelling corrections were noted by staff.

**Motion:** (D. Turner, A. West) *Motion to approve the minutes as corrected for the meeting held January 19, 2005.*

Discussion: None

**Motion continued:** *Unanimous to approve*

**3. Regulations - Action (voting)** (see handouts)

**Chapter 25.02** Close time about Monhegan – Repeal

**Chapter 35** Maine Fresh Groundfish Quality Control Program – Repeal

**Chapter 46** Maine Salmonid Production Quality Assurance Program – Repeal

**Chapter 47** Maine Mussel Select Grade Standard Program – Repeal

**Motion:** (C. Pendleton, A. West) *Motion to accept the rulemaking repeals for Chapters 25.02, 35, 46 and 47 as written.*

Discussion: none

**Motion continued:** *Unanimous to approve.*

**Chapter 25.93(F)(1)(b)(iv)** Exit Ratios for Limited Entry Zones – Zone G

**Motion:** (C. Pendleton, A. West) *Motion to accept the rulemaking for Chapter 25.93 as written.*

Discussion:

B. Sutter asked if a survey was done and about the statistics.

Comm. Lapointe: The survey was done and approximately 60% of the respondents wanted an increased exit ratio change. The bulk wanted 5:1.

B. Sutter: Is an exit ratio the only way changes can be made to reduce effort?

Comm. Lapointe: The ratio is one of the things that addresses effort in the long term and this has been done coincidental with separate effort reduction discussions with the Lobster Advisory Council.

C. Pendleton: He talked with the local lobster fishermen in his area and this is considered a blunt tool. Trap reductions across the board was not acceptable to the fishermen. But there will be a time when they may need to address this again. There needs to be a way to let young persons into the industry and it is hoped that the councils will find a better way to let them in. There are too many traps in my home area.

B. Sutter: Question about entry by persons under 18 now, which has no limits?

Comm. Lapointe: Students under 18 enter through "controlled entry" versus limited-entry. The issue of effort is recognized widely and it is for this reason that the Department initiated meetings with all zones since February. Three points: 1) the ASMFC lobster assessment from 6 years ago is now being updated, 2) the S. New England lobster population decline and the outcome when the fishermen and other state regulators waited, and 3) there is simply more crowding now. It is for these reasons we are looking at this issue including the number of participants, number of traps, etc., and getting soup to nuts suggestions such as pulling traps, on-shore counts, and a long list of ideas. At this point the Lobster Advisory Council (LAC) has reached overload on this issue and wanted to hold off a bit. We will revisit this issue at their next meeting.

Regarding students, during the limited-entry development in 1999 the Department argued to count the students as new entrants but the fishermen didn't want this. Zone D for example sought a specific legislative allowance for grandfathering for its zone only. Effort in the fishery needs a whole lot of work.

B. Sutter: Some zones are very large with whole communities begin eliminated, which shouldn't happen.

C. Pendleton: When talking with the guys this doesn't solve the problem but...the zone councils should show conservation equivalents of their goals, such as reducing traps over a 5 year period.

Comm. Lapointe: the current law established the 1997 number of licenses as the target goal. Persons are correct about the specifics however we need a bigger picture look-see.

C. Pendleton: If I don't buy a license anymore there is no reduction because I don't fish anyway.

Comm. Lapointe: In our separate discussions this is just one component.

B. Sutter: Changing the exit ratio doesn't make a difference. They need to address it all plus the students and not just penalize apprentices.

Comm. Lapointe: Currently there is proposed legislation to allow the zones to grandfather those on the old ratio.

S. Tilton: To Bill Sutter – Are you rejecting this?

B. Sutter: Yes to say that this isn't what you should do.

Comm. Lapointe: The consequence of rejecting this proposed rule is to send the issue back to the zone council to say they must look at this more.

S. Tilton: Is anyone on this council in favor of this?

C. Pendleton: Having made the motion to support it yes, because they have used the mechanism allowed them. It isn't solving the problem but it is a learning experience.

B. Sutter: The statistics say they don't want it.

C. Pendleton: On the waterfront they want this and less fishermen in the fishery.

Comm. Lapointe: Discussion on the statistics interpretation.

B. Sutter: Can they change this again?

L. Churchill: According to the regulations and Zone G bylaws, if passed, they must wait 24 months and if not passed the zone council must wait at least 36 months before initiating another survey.

Comm. Lapointe: Yes, we need to work on effort and know that we never have a perfect solution. These are small increments but it is important to move forward. The Councils have put a lot of work into this with respect to co-management and it is therefore worthwhile to support.

Chair Rice: It is important to point out to those persons in the audience that we cannot take public comment at this meeting.

Comm. Lapointe: The Attorney General's Office corrected this council's activities a year ago as comments must be taken during the comment period, which is now closed.

C. Pendleton: The vote by the Zone G Council is important. The problem was that 93 persons versus what reaches the Advisory Council. It feels like I have hand cuffs on. Will there be 46% responding next time? It is hoped that if this passes, the learning curve is that they need more discussion. Terry Stockwell needs to keep pushing so that, for example, the Zone G Council

doesn't request the Comm. Lapointe to "choose" the 5:1 or 3:1 exit ratio, which is not good enough.

Chair Rice: This is a double edged sword however; we have a zone process at the local level where this should be even though it is not palatable.

Comm. Lapointe: We had ~200 persons at the Fishermen's Forum session on this, and then at the LAC they got cold feet. When we go back we know the fishermen need to work on this. We also need to remind the Marine Resources Committee (MRC) and the Zone Councils as well. The reduction must be significant. There have been ~1.8 million tags issued and it needs to reach 1.35 million. We need to get that message back.

B. Sutter: Even though the zone cannot request to change the exit ratio quickly (24 or 36 months) the legislature could change this upon request by the industry at large...

Comm. Lapointe: Yes.

***Motion continued:***

Affirmative votes: D. Turner, S. Tilton, D. Pecci, C. Pendleton, D. Temple, A. West, D. Rice

Negative votes: B. Sutter, Ralph Smith

***The motion passed by a majority of affirmative votes.***

Chair Rice: Note that this council supports the points made particularly by C. Pendleton and B. Sutter.

[Requested recap of B. Sutter's points: In his opinion the majority of respondents to the survey opted for something less than 4:1. Simply tweaking exit ratios is not an acceptable way to confront the effort problem; particularly when entrance through the student license avenue is unlimited, whereas this proposal would severely affect all presently in the apprentice program while affecting none in the student program.]

**Chapter 2.37(1)(A)(8) Decision Standards – Lighting**

S. Horn Olsen gave a brief review of the rule development. Lighting was separated from a previous rulemaking that has had a second round of rulemaking. The Aquaculture Task Force drafted rules originally then they were rewritten after more ground truthing with the industry was conducted. Changes apply mostly to the lighting for polar circles and night operations to ensure safe operations (see paragraph 5 in the rules). The Task Force's point was to avoid unnecessary scattered lighting or unneeded lights. All aquaculturists were notified and there were no comments indicating this is generally accepted. This applies to new applications.

Comm. Lapointe: This regulation is defined as "major substantive" and must go back to the Marine Resources Committee in the Legislature who must approve this as well.

B. Sutter: As a practical matter this only applies to finfish lease sites.

D. Pecci: Why is this being done statewide versus being dealt with at the local municipal level? In his opinion this is no different from the example of rules pertaining to airboats in Brunswick.

Comm. Lapointe: This came up as an issue with the Task Force. If aquaculture issues such as this were handled at the local level there would be no aquaculture. The Task Force did a good job to investigate this issue, which become tough sore spots in communities.

S. Tilton: Aquaculture would be shut down if it was only handled locally, the Commissioner is correct on that point. Now we have standards versus a municipality issue which would shut them down. This is fairer.

B. Sutter: These are state regulations however town could be more restrictive.

Comm. Lapointe: The Task Force goal was to establish minimum guidelines or standards.

***Motion:*** (C. Pendleton, S. Tilton) *Motion to accept the rulemaking for Chapter 2.37(1)(A)(8) as written.*

Discussion: none

***Motion continued:*** *Unanimous to approve.*

**Chapter 2.90(2)(G)(2) LPA Renewal application – technical correction**

**Chapter 9.01(A) Compliance and Chapter 9.07 Shellfish Aquaculture – Technical corrections**  
Mary Costigan gave a brief review of the technical correction in Chapter 2.90.

**Motion:** (D. Turner, C. Pendleton) Motion to accept the rulemaking for Chapters 2.90, 9.01(A) and 9.07 as written.

Discussion: none

**Motion continued:** Unanimous to approve.

**Chapter 10.04** Clams and Quahogs: Quahog - Registration and Labeling for aquaculture – Repeals and updates

L. Churchill briefly explained that these regulations needed to be updated for compliance with federal rules and the extensive updates in Chapters 9 and 15-20 over the past few years.

B. Sutter asked if Chapter 9.01 and 9.07 affected just aquaculture or the industry as a whole and why is there a closure for mahogany quahogs in southern Maine that could be opened?

A. Fitzpatrick: The change in Chapter 9.01 affects all and changes in 9.07 apply to aquaculture. The mahogany quahog closure referred to is due to paralytic shellfish poisoning and is also a function of meeting the minimum amount of testing.

Comm. Lapointe and Chair Rice indicated that the questions about quahogs are completely separate from the rulemaking in Chapter 10.04 and to please revisit this issue separately under Other Business.

**Motion:** (D. Turner, S. Tilton) Motion to accept the rulemaking for Chapters 10.04 as written.

Discussion: none

**Motion continued:** Unanimous to approve.

**Chapter 14** Oyster Regulations – Updates and repeals

**Motion:** (D. Turner, S. Tilton) Motion to accept the rulemaking for Chapters 14 as written.

Discussion: none

**Motion continued:** Unanimous to approve.

#### **4. Other Business**

**Mahogany Quahogs** – discussion on closure from Schoodic Point west to the Maine – NH border for paralytic Shellfish poisoning (PSP).

Comm. Lapointe: The closure is a function of workload on staff, which if addressed then next the matter of the 100,000 bushel quota regulated by the Mid Atlantic Fishery Management Council (MAFMC) must be addressed on how to divide the resource.

B. Sutter: This does not apply to inside state waters where clamming is now open. Inside 3 miles you don't have to report. If you are a federally licensed dealer you have to report but if not federally licensed then there is no reporting.

Comm. Lapointe: When we open a new fishery or area we should do it with more thought and will get the correct information on regulations, assessment constraints and public health and biotoxins monitoring and get back to Bill.

R. Smith: How close are we to the assessment fulfillment? The 100,000 bushels are being exhausted in a very small area.

**Budget –**

B. Sutter commended Comm. Lapointe on the budget and asked how much was cut in the end?

Comm. Lapointe: When we started we had to use level budgeting with our spending power decreased. Staff defended what we have well and in the end we're OK as far as any agency is now.

**Wet Storage of Lobster Traps –**

B. Sutter: Regulations on prohibiting wet storage of lobster traps over 30 days was passed (last year). The Department has done a good job working on issuing summonses. However, while scalloping this winter he has still been finding "weeded" traps. He also found that persons had to buy their lobster licenses first (back in March) to retrieve their illegally wet stored traps.

Comm. Lapointe: This issue isn't missing traps, it is wet storage.

B. Sutter: To get the message out next year every pot should be a violation.

Comm. Lapointe: License suspension works well for us. If they are being blatant the suspension gains compliance.

### **Endangered Species Act –**

Comm. Lapointe: There has been a petition to declare the American Oyster endangered. This stems from the Asiatic species (*Crassostrea gigas*) being planted in Chesapeake Bay. This filing would impact the entire range; and this will likely move forward. At a recent meeting of state level regulators he asked them to think about the impact of this on oyster aquaculture from Maine to New York.

The American eel was also petitioned (from a source in Augusta) to be endangered too. This now impacts its entire range, which is from the St. Lawrence to Mexican border. The status review on this is late being issued. There are a couple of bills in the Legislature on eels. There are ASMFC hearings on the American eel listing being held in Portland and Bangor. The new assessment is due this spring, hopefully out by mid summer.

### **NEFMC -**

B days on groundfish – brief discussion

Chair Rice: Herring - the 3 day conference in Washington D.C. was represented by all of the council members. Quotas were a big issue.

Comm. Lapointe: The Oceans Plan versus the Government's Oceans Commissions Report, which is consolidation and privatization is being pushed hard.

Chair Rice: The way we allocate fish will change and we need to be on top of this and should craft other options.

### **Fleet Visioning –**

Chair Rice: Regarding the questions about fleet visioning – Get Involved.

B. Sutter: At the Fishermen's Forum assess was a big issue as to when the fish come back will the control be with the state or federal level. Those in state waters should be where the state puts its effort, which hasn't been happening. We have not seen the state be proactive on this.

Chair Rice: Agree but we need to stay involved, take further action to put other options on the table.

B. Sutter: The general access permit now makes VMS required to just go catch 40 pounds a year. This is futile as we go down the road for those who aren't the big participants with several boats and if you can't travel beyond 40-50 miles.

Chair Rice: It is discouraging but not futile. Persons who participated said to do this and it went through because few persons didn't work on it to oppose. We can't give up now. We must pay attention for the next 3-5 years; if we don't carve a niche we won't get back in.

A. West: Regarding the highly pelagic(s) bill, he agrees but Maine could seek a community development quota (CDQ). Hancock and Washington counties could get a quota for the herring allocation. If we're not proactive bait will go to Cape Cod to be frozen then the other states will bury Maine.

B. Sutter: Fishermen can't afford to be proactive and we're not well represented.

Chair Rice: Al is partly right. Look at Alaska for example.

### **Exit ratios –**

Chair Rice: Regarding the lobster management zones and exit ratios, to this council, have we said enough? Do we need more said to DMR or the Zones?

The council members concurred with the Chair's recommendation to request Commissioner Lapointe to draft letters from this Advisory Council and the Marine Resources Committee to be formally presented on this matter to the Lobster Zone Councils on exit ratios with a copy to be provided to council members. There was agreement by the advisors that the use of entry and

exit ratios should not be misconceived as a fix all conservation tool and in some cases was being seen as being motivated by greed instead of conservation.

B. Sutter: What happens when there's a hiccup in the lobster catch and management closes in?

Comm. Lapointe: ...and that is why we've started these discussions, partially due to what happened in Southern New England's lobster fishery. It is easier to develop conservation measures when ~63 million pounds are landed such as in 2004 yet conservation is tougher here than S. New England.

B. Sutter: It only takes one silly thing and they won't be able to sell lobster.

Comm. Lapointe: The lobster promotion council director indicates our way is an old style of selling lobster.

Chair Rice: It should be pointed out that that idea is 15 years old; 50-60% of the lobster catch goes to processors and the middle corridor states therefore he disagrees with this assumption on live lobster selling methods are out of date.

Comm. Lapointe: We won't agree on this however, Bill's point about unknowns is good.

Chair Rice: The average lobster landings per year, for many years, were 25-30 million and we will have problems down the road.

### **Tags –**

Chair Rice: He's heard complaints or concerns about people changing tags. How does Patrol handle this? This means persons could have 1200-1400 traps in the water in the spring.

Comm. Lapointe: This needs further discussion. It takes work to develop enforcement cases.

### **Marine Protected Areas –**

Comm. Lapointe: A report from the Dept. of Commerce is due out late June. There are meetings scheduled May 17-19 in Portland. Once the report is out there will be more activity. Discussion continued.

Chair Rice: We all need to pay attention to this as we will be getting into ecosystem management. There are a lot of persons who think a closed area is easy to manage and there is talk of closing 50% of the Gulf of Maine.

Discussion continued.

### **Legislation – see handout**

### **Taunton Bay –**

B. Sutter: What is the status of the closure there?

Comm. Lapointe: It is temporarily closed to allow the legislative process to be completed. Our idea was to keep it closed but a number of persons said to open it with controls. It was closed 5 years ago when the new bridge was built allowing fresh access. At the time it was said that no one wanted to drag mussels in there because the shells were soft...and is this to say that they've now hardened up?

R. Smith: Controlled dragging means permits to individuals. Why is Taunton Bay so important versus other areas?

Comm. Lapointe: The local Senator 5 years ago said that this wouldn't happen.

R. Smith: Friends of Taunton Bay wanted it.

Comm. Lapointe: There was no conflict back then because it wasn't being dragged.

**Motion:** (C. Pendleton, D. Turner), the Council voted to adjourn.

**Motion continued:** Unanimous to approve